

Gardner, Hugh C., et al.

Appl. No. 10/701,519

Filed: November 6, 2003

Atty. Docket No. 26540-RA5

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Remarks

Examiner has required restriction between Group I (reading on claims 1-9), Group II (reading on claims 10-17) and Group III (reading on claims 18-20).

Applicants have provisionally elected to prosecute Group I (reading on claims 1-9) with traverse.

Examiner considers Group II and Group III to be related as process of making and product made, and distinct as "the process of making a carpet can be made using conventional secondary backing materials such as non-woven textiles or thermoplastic polymer films rather than the secondary backing material according to claim 1". Applicants respectfully traverse.

Examiner's reason for distinctness as expressed above is inconsistent with both parts (1) and (2) of MPEP §806.05(f), which states (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process. As such, and contrary to Examiner's quoted reasoning, the process as claimed expressly includes use of the secondary backing according to claim 1 and present in the carpet according to the Group II claims, so it clearly cannot be said to use a conventional secondary backing rather than the backing of Group I.

Examiner asserts that Groups I and II are distinct on the ground that the carpet backing can be utilized as a stand-alone fabric or in a variety of composite/laminate structures such as used in building or structural panels or geotextiles. Applicants respectfully traverse.

Practically, the claims of Groups I and II clearly reflect as a single inventive concept, the claimed backing constructed in a flat weave as recited in both

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independent claims 1 and 9. That common concept and corresponding language in both groups' independent claims rebut the asserted distinctness more than the utilities asserted support the restriction requirement.

Examiner asserts that Groups I and II are distinct on the ground that the backing can be utilized to make other composite materials such as panels, reinforced impact resistant materials or geotextiles. Applicants respectfully traverse again.

All of the claims of Group III are dependent ultimately from claim 1 of Group I, again weighing against the asserted distinctness more than the utilities asserted support distinctness. The claims of both Groups I and III also reflect the common inventive concept noted above with respect to Groups I and II.

Accordingly, Applicants respectfully request that Examiner reconsider and withdraw the election/restriction requirement in view of the foregoing arguments.

Amendment to the Specification

Applicants have amended the specification to include language of a priority claim. The claimed priority was present in the application as filed in the declaration thereof, as is reflected in the updated filing receipt dated April 9, 2004.

CONCLUSION

In view of the foregoing, it is submitted that there are good and valid reasons not to restrict the claims as required in the outstanding action; thus, withdrawal of the requirement is respectfully requested. In the alternative, it is request that the requirement be modified to combine into a single invention either the backing and carpet claims of Groups I and II, or the backing claims of Group I and the claims of Group II dependent therefrom. The above election is to form, and, thus, no new matter was added.

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In light of the election, Applicants respectfully submit that Claims 1-9 are now allowable.

Otherwise, should the Examiner have any questions regarding this submission, he is invited to contact the undersigned counsel at the address or telephone number below.

Respectfully submitted, this 22nd day of March, 2005,



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